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ATTN: MCMR-JA (Ms. Elizabeth Arwine)
Office of the Staff Judge Advocate
U.S. Army Medical Research and Materiel
Command
504 Scott Street
Fort Detrick MD 21702-5012

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OFFICE OF PETITIONS

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OFFICE OF PETITIONS

In re Application of
Olson, et al :
Application No. 10/083,336 :
Filed: 27 February, 2002 : **ON PETITION**
Attorney Docket No.: 034047.016 (RIID01-58) :
/P67452 USO

This is a decision on the petition (with fees) filed on 10 November, 2004, under 37 C.F.R. §1.183 to waive the provisions of 37 C.F.R. §1.48(a)(2) as to Ross D. LeClaire, whose name Petitioner seeks to delete from the inventive entity and so correct the statement of that entity.

The petition under 37 C.F.R. §1.183 for waiver is **GRANTED**.

And the petition under 37 C.F.R. §1.48 is **GRANTED**.

BACKGROUND

The record reflects that:

- the instant application was filed on 27 February, 2002, and therein Ross D. LeClaire was listed as one of the named inventors;
- the assignment by Ross D. LeClaire (Mr. LeClaire) of his interests in the instant application was filed of record at Reel/Frame 015100/0342 on 2 September, 2004;
- the petition filed on 10 November, 2004, seeks to delete the name of Mr. LeClaire as an

inventor, and Petitioner herein Suzannah K. Sundby (Reg. No. 43,172) and the Counsel for the assignee Elizabeth Arwine (Reg. No. 45,867) have represented that assignee concurs with and approves of the deletion of Mr. LeClaire and that the prior inclusion of his name was done in error and without deceptive intent.

37 C.F.R. §1.48(a) requires:

- (1) A request to correct the inventorship that sets forth the desired inventorship change;
- (2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
- (3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47;
- (4) The processing fee set forth in § 1.17(I); and
- (5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see 37 C.F.R. § 3.73(b)).

Petitioner has satisfied requirements (1), (3), (4) and (5) above. The petition specifically requests the deletion of Ross D. LeClaire. Petitioner has submitted a declaration pursuant to 37 C.F.R. §1.63 executed by all of the inventors (to wit, Mark A. Olson, Charles B. Millard, Michael P. Byrne and Robert W. Wannemacher) as required by 37 C.F.R. §1.48(a)(2). Petitioner has paid the processing fee. Finally, the petition includes a statement signed by Elizabeth Arwine, Patent Attorney and IP Counsel for assignee the U.S. Army Medical Research and Materiel Command.

However, Petitioner has not submitted the required statement by LeClaire as required by 37 C.F.R. §1.48(a)(2).

In order for a petition under 37 C.F.R. §1.183 to be granted, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules. In the "AFFIDAVIT OF ELIZABETH ARWINE" in support of the petition, Ms. Arwine attested Mr. LeClaire has refused to sign and submit a statement indicating the error of his inclusion after a copy of the statement was forwarded to him via Email (including his response to the request).

Accordingly, the newly executed declaration filed on 10 November, 2004 will be entered, despite the fact that the requirement set forth in 37 C.F.R. §1.48(a)(2) that the inventor being deleted make a statement that the error in inventorship (i.e., his erroneous inclusion

in the inventive entity occurred without deceptive intent) has not been satisfied.

The application file is being forwarded to Group Art Unit 1652 for further processing in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-9199.

A handwritten signature in black ink, appearing to read 'J. Gillon, Jr.', with a stylized flourish at the end.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions